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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

JANG GEUN CHUNG et al., Plaintiffs and Appellants, v. KWANG CHAN KIM et al., Defendants and Respondents.	B315550 (Los Angeles County Super. Ct. No. 21STCV04092)

APPEAL from an order and a judgment of the Superior Court of Los Angeles County, John P. Doyle, Judge. Dismissed in part and affirmed in part; writ of supersedeas vacated.

Bahar Law Office and Sarvenaz Bahar for Plaintiffs and Appellants.

Justin J. Shrenger and Chong H. Roh for Defendants and Respondents.

This appeal arises out of a contest between two rival factions for control over a Korean American institution called the Oriental Mission Church (OMC), a California nonprofit religious corporation. Appellant Jang Geun Chung is an "Active Elder" at OMC and the leader of one faction, and OMC's Senior Pastor, respondent Chi Hoon Kim, is the leader of the other faction. Prior to the initiation of the trial court proceedings, these individuals were the only two members of OMC's "Session," or board of directors. Chung and the Senior Pastor do not agree on whom to nominate as another Active Elder on the Session. Had Chung and the Senior Pastor concurred on the selection of one or more nominees, then any candidate receiving a vote of two-thirds or more of OMC's congregation would have been elected to the Active Elder position and ultimately would have joined the Session.

Chung and the other members of his faction (collectively, appellants) filed suit against the Senior Pastor and the two other members of his faction (collectively, respondents),[1] and moved for a declaration under Corporations Code[2] section 9418 that an election conducted on January 17, 2021 was invalid. The trial court granted appellants' motion, reasoning that the Senior Pastor had acted improperly in unilaterally selecting the

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[1] Appellants are the following 11 individuals: Jang Geun Chung, Sung K. Lee, Bumyon Lee, Jihye Lee, Jennifer Rhee, Grace Kwak, Chris Pak, Aeja Lim, Sarah Pak, Kyung Sun Kim, and Dong Hee Bae. Respondents are the following three persons: Senior Pastor Chi Hoon Kim, Kwang Chan Kim, and Joongkoo Cho.

[2] Undesignated statutory citations are to the Corporations Code.

candidates and scheduling the election. The court then declared that the election of respondents Kwang Chan Kim and Joongkoo Cho was invalid, and ordered that a new election be held. The new election was conducted on September 26, 2021. Respondent Kwang Chan Kim claims to be the winner of the new election.[3]

Appellants contest the trial court's order adopting respondents' proposed procedures for the new election, along with several other related rulings. Their chief contention is that OMC's bylaws allow certain former Active Elders (whom the parties call "Inactive Elders") to stand for reelection without being nominated by the Session. Appellants claim the trial court erred in rejecting their proposal to have these Inactive Elders run for reelection, and instead requiring Chung and the Senior Pastor each to nominate one candidate from among 16 individuals, and ordering that the candidate who secured the most votes would win. Appellants claim that by adopting respondents' procedure, the trial court violated the Establishment Clause of the United States Constitution and section 9418 by unnecessarily entangling the court in the church's religious affairs.

Appellants' proposal relies on a translation of OMC's bylaws that they submitted to the trial court in support of what that court construed as a motion for reconsideration of the order adopting respondents' proposal for the new election. Appellants' failure to establish the trial court abused its discretion in denying

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[3] Appellants do not specify the size of OMC's congregation, although they do claim that "OMC is one of the oldest and largest Korean American churches in the United States." Respondents claim that Kwang Chan Kim won 410 out of 452 votes cast during the new election, but they do not provide a record cite for that proposition.

that motion is fatal to their claims of error predicated on their proposal concerning Inactive Elders. Furthermore, we conclude that under the abuse of discretion standard, appellants fail to demonstrate error in the trial court's rejection of appellants' claim that the new election was administered in an unfair and biased manner. Lastly, we reject any remaining claims of error because appellants fail to raise them adequately. Finding no error, we affirm the order adopting respondents' recommended election procedures and the judgment entered thereafter. We also dismiss as abandoned appellants' appeal of the order invalidating the January 2021 election, and we vacate the writ of supersedeas that had stayed the results of the new election.

FACTUAL AND PROCEDURAL BACKGROUND[4]

We summarize only those facts that are relevant to our disposition of this appeal.

1. *OMC, the Impasse on the Session, and the January 17, 2021 Election*

OMC is a Korean American church, and also a California nonprofit religious corporation governed by section 9110, et seq.

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[4] We derive our Factual and Procedural Background in part from undisputed aspects of the trial court's rulings and the parties' filings. (See *Baxter v. State Teachers' Retirement System* (2017) 18 Cal.App.5th 340, 349, fn. 2 [utilizing the summary of facts provided in the trial court's ruling]; *Artal v. Allen* (2003) 111 Cal.App.4th 273, 275, fn. 2 (*Artal*) [" '[B]riefs and argument . . . are reliable indications of a party's position on the facts as well as the law, and a reviewing court may make use of statements therein as admissions against the party. [Citations.]' [Citations.]"].)

OMC's bylaws provide that the "Session" is OMC's board of directors, and that the Session is comprised of "the Senior Pastor, Senior Assistant Pastor, and Active Elders."[5] Article 81 provides that "[t]he attendance of the Moderator of the Session [(i.e., the Senior Pastor)] and at least half or more of its members shall constitute a quorum of the Session."

The bylaws identify several different types of Elders including (inter alia) "Active Elder[s,] . . . who [are] . . . members of [the] Church engaged in the ministry"; "Elder[s]-in-the-Ministry[, who are] former Active Elder[s] . . . whose duties . . . expired prior to retirement age and [are] now engaged in the service of regional outreach"; and "Elder[s] Emeritus[,] . . . [who are] retired former Active Elder[s or] Elder[s]-in-the-Ministry." "The tenure of an Active Elder shall be for a period of 36 months" and "65-years of age shall constitute the retirement age from active duty." The bylaws provide that "[a]fter the end of the three year term" of an Active Elder, that person "shall be on inactive status . . . ." The parties refer to persons on this "inactive status" as "Inactive Elders," even though the bylaws do not expressly use that term.

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[5] In their briefing, appellants rely heavily upon an English version of OMC's bylaws that was attached to a declaration from Chung, who authenticated that document, which was filed in the trial court in March 2021. Respondents do not dispute the accuracy of this translation in their appellate brief, and the trial court appears to have relied upon it as well. Accordingly, we too utilize this translation. As set forth in our Discussion, part B, *post*, we, however, do not rely upon a different version of Article 54 of the bylaws that appellants claim is a "corrected translation" of that provision.

Article 48 lists the following qualifications of an Elder: "1. A believer admitted into the faith for at least 7 years and in good standing. [¶] 2. Is of 35-years of age or older and has considerable knowledge and insight and has leadership abilities. [¶] 3. Is engaged in an upright profession. [¶] 4. Has clearly experienced God's grace. [¶] 5. Accepts and is willing to submit to this congregation's doctrines, confessions of faith and governance. [¶] 6. Has served for three years [or] more as an ordained deacon. [¶] 7. Has a high-degree of understanding of the Bible and ministries of the Church. [¶] 8. Has diligently undergone eldership training for a period of no less than six-months. [¶] 9. Is befitting the description found in 1 Timothy 3:1–7."

Article 51 prescribes the following procedures for "The Appointment of an Elder": "1. In principle, there is to be one elder per every thirty believers. [¶] 2. The selection of an elder shall be by a resolution of the Session, and the selected candidate shall be approved by a vote of 2/3 or more of the Congregational Meeting. [¶] 3. The Session shall cast a vote three times as part of the candidate selection process and the selected candidate shall have received a vote of 2/3 or more." With regard to "The Installation of an Elder," Article 52 provides: "The candidate selected through the voting process shall undergo a general educational training program as determined by the Session for a period of six months, sit for an exam, and be installed in accordance with the process and procedures set up by the Joint Mission Group."

Since April or May 2020, the Session has had only two members: respondent Chi Hoon Kim, who is OMC's Senior

Pastor; and appellant Jang Geun Chung, who is an Active Elder.[6] It is undisputed that at all times relevant to the instant appeal, the Senior Pastor and Chung have been unable to agree on whom to nominate as a candidate for the position of Active Elder. (See Discussion, part C.1, *post*.)

According to appellants, the "Senior Pastor *unilaterally*, without the input or approval of Elder Chung, scheduled an election for the Session on January 17, 2021, nominated two candidates of his own choosing ([respondents] Kwang Chan Kim and Joongkoo Cho) for the position of Elder and prescribed the procedures for the election." Respondents claim that Kwang Chan Kim and Joongkoo Cho received at least two-thirds of the vote of the congregation and were elected as Active Elders to the Session.

2. *Appellants' Complaint, Their Motion to Invalidate the January 17, 2021 Election, and the July 21, 2021 Order*

On February 2, 2021, appellants filed a complaint against respondents seeking (1) a determination of the validity of the January 17, 2021 election, pursuant to section 9418;[7] and

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[6] The other parties to this appeal are members of OMC.

[7] Section 9418, subdivision (a) provides: "Upon the filing of an action therefor by any director or member, or by any person who had the right to vote in the election at issue after such director, member, or person has exhausted any remedies provided in the articles or bylaws, the superior court of the proper county shall determine the validity of any election or appointment of any director of any corporation." (§ 9418, subd. (a).)

(2) declaratory relief. On March 22, 2021, appellants moved to invalidate the January 17, 2021 election, pursuant to section 9418.

On July 21, 2021, the trial court granted appellants' motion, and declared that "the election was improper under OMC's bylaws" and that "the election of [respondents] Kwang Chan Kim and Joongkoo Cho as Session members" was "inva[l]id." In arriving at this conclusion, the court agreed with appellants that the Senior Pastor "violated OMC's bylaws" by "unilaterally select[ing] the candidates for an election and schedul[ing] a nonregular congregation meeting when such was not approved by a quorum of the Session." The court ordered the Senior Pastor and Chung to "cause a new election to be conducted and concluded pursuant to the governing bylaws on or before 5:00 p.m. on 10/01/2021." The trial court "thereafter ordered briefing regarding the election."

3. *The September 2, 2021 Order Adopting Respondents' Proposed Procedures for the New Election*

On September 2, 2021, the trial court, having considered the parties' briefing and oral argument, decided to adopt procedures for the new election that respondents had proposed. These election procedures appear in five paragraphs that are reproduced in pertinent part below:

"1. Session Meeting [¶] A meeting of the Session will be held within the next week at 5:00 pm at the offices of the Oriental Mission Church. This meeting is noticed pursuant to By Laws Articles 82(2)(a) and 82(2)(b). Elder Chung will make himself available for such meeting [at] a mutually convenient time and attend."

"2. Session Meeting Agenda [¶] The sole agenda item of the Session meeting will be to select candidates for Active Elder."

"3. Election Candidates [¶] There are sixteen (16) current members of OMC that meet the qualifications of Elder pursuant to By Laws Article 48. All such eligible members will be approached and asked if they are willing to run for office. [Senior Pastor] and Elder Chung will each nominate one (1) of the individuals who have indicated in writing that they are willing to run for office. The two (2) individuals shall be placed on the ballot for election pursuant to a resolution adopted pursuant to By Laws Article 51."

"4. Procedures [¶] The Congregational Meeting to Election of Elder(s) pursuant to Article 51(2) should be held approximately three (3) weeks after the Session Meeting. Voting can either be done in person at the Congregational Meeting or by mail-in ballot. Mail-in ballots must be received at OMC's office one (1) day prior to the Congregational Meeting."

"5. Special Provisions [¶] An election committee comprised of 7 mutually agreeable Elders Emeritus shall oversee the election and calculate the results. The candidate with the greatest number of votes shall be seated."

4. *The September 8, 2021 Order Denying Appellants' Ex Parte Application for Reconsideration of the September 2, 2021 Order*

On September 7, 2021, appellants filed an ex parte application for reconsideration of the September 2, 2021 order. In this ex parte application, appellants sought the following relief:

"First, the election candidates be selected pursuant to OMC bylaws, specifically that the four elders who are inactive be given

the opportunity to provide a written consent to run for the election."

"Secondly, the election should be concluded pursuant to OMC bylaws in that the in-person voting at a congregational meeting be the prescribed method of the election."

"Third, the election committee be comprised of mutually agreed members comprising of [*sic*] one Elder Emeritus to serve as the election committee chair and three deacons and three deaconesses as election committee members to oversee the election and count the ballots to determine the result of the election."

"In addition, [appellants] will request that the court enter a judgment pursuant to [the] July 21, 2021 order and either September 2, 2021 order or a new order once the Court enters a final order regarding the issue of implementing the procedure for the new election, so that any party who wishes to file an appeal can do so with certainty."

"Finally, should the court not enter a judgment and/or reconsider September 2, 2021 order [*sic*] and enter a new order on its own motion, [appellants] will request a stay of the enforcement of the September 2, 2021 order so that [appellants] can seek a writ or an appeal of this court's September 2, 2021 order."[8]

On September 8, 2021, the trial court denied appellants' ex parte application. In rendering its decision, the court stated:

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[8] The index accompanying the appendix of exhibits in support of appellants' petition for writ of supersedeas (appellants' appendix) indicates that although a version of the bylaws was attached to the ex parte application, appellants have omitted that document from the appellate record.

"Over [appellants'] objection, the Court's previous orders stand." The court further stated: "The Court on its own motion, sets an Order to Show Cause Re Entry of Judgment for 09/16/2021. The Court orders counsel to file supplemental briefs, simultaneously, on 09/13/2021 by noon. The page limit for each brief is 10 pages."

5. *The September 16, 2021 Order Denying Appellants' Motion for Reconsideration of the September 2, 2021 Order*

On September 13, 2021, appellants filed a supplemental brief. Accompanying that supplemental brief was a translation of Article 54 of the bylaws that differed from the version that appellants had offered in support of their motion to invalidate the January 17, 2021 election. (See Discussion, part B, *post*.)

On September 16, 2021, the trial court construed appellants' supplemental brief as "mainly" a motion for reconsideration that sought the same relief as appellants' prior ex parte application seeking reconsideration of the September 2, 2021 order (i.e., the application that was filed on September 7, 2021 and denied the following day), and denied that motion. The court opined that, "[b]ased on what has been presented by [appellants] with regard to the candidate-selection process, it is not readily apparent that their proposition is possible or that it would necessarily remedy the situation."

6. *Appellants' September 24, 2021 Notice of Appeal, the September 26, 2021 Election, the October 13, 2021 Judgment, the December 2, 2021 Order Granting Appellants' Petition for Writ of Supersedeas, Oral Argument, and the Parties' Supplemental Briefing*

On September 24, 2021, appellants filed a notice of appeal seeking review of "the trial court's orders entered on July 21, September 2 and September 16, 2021, and any other orders that are separately appealable."

The new election was held on September 26, 2021. The Senior Pastor had nominated respondent Kwang Chan Kim as his candidate for the Active Elder position, and Chung had nominated Jin Hee Lee. Respondents claim that Kwang Chan Kim won the election with 90.7% of the vote, and that Lee received the support of only 9.3% of the congregation. Appellants assert the administration of the election was "unfair and biased" in several respects. (See Discussion, part D, *post*.)

On October 13, 2021, the trial court entered judgment denying appellants any relief other than ordering the election that was held on September 26, 2021.[9]

On December 2, 2021, we granted appellants' petition for writ of supersedeas, and ordered that "[t]hose parts of the September 2, 2021 and September 16, 2021 orders of the superior

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[9] Although the judgment represents that "such election was held on September 24, 2021," we conclude that this is a typographical error because the parties agree the election was actually held on September 26, 2021.

court directing the parties to conduct an election for Active Elder according to the procedures specified in the orders, and the results of any election conducted pursuant to the orders, are hereby stayed pending resolution of [appellants'] appeal . . . or further order of this Court." We also granted appellants' request for calendar preference pursuant to Code of Civil Procedure section 44.

We held oral argument on March 14, 2022.

On March 15, 2022, appellants filed a letter that sought leave to submit the supplemental briefing contained within that correspondence. Specifically, appellants' proposed supplemental brief addressed whether they had presented the "corrected translation" of Article 54 to the trial court for the first time in a motion for reconsideration of the September 2, 2021 order. On March 17, 2022, we issued an order that granted appellants' request and authorized respondents to submit a responsive supplemental brief. Respondents thereafter filed their supplemental brief.

STANDARD OF REVIEW

" 'It is well settled that all presumptions and intendments are in favor of supporting the judgment or order appealed from, and that the appellant has the burden of showing reversible error, and in the absence of such showing, the judgment or order appealed from will be affirmed.' [Citations.]" (*Estate of Sapp* (2019) 36 Cal.App.5th 86, 104.) " '[T]o demonstrate error, an appellant must supply the reviewing court with some cogent argument supported by legal analysis and citation to the record.' [Citation.]" (*Hernandez v. First Student, Inc.* (2019) 37 Cal.App.5th 270, 277 (*Hernandez*).)

Appellants argue that *all* of their claims of error are subject to de novo review because "[t]his appeal presents issues of law, statutory and constitutional, on undisputed facts . . . ." (See *Shewry v. Begil* (2005) 128 Cal.App.4th 639, 642 ["Matters presenting pure questions of law, not involving the resolution of disputed facts, are subject to de novo review."].) We do not agree.

We review appellants' challenge to the trial court's September 16, 2021 order denying their reconsideration motion, along with their claim that the new election was conducted in an unfair and biased way, for abuse of discretion. (See Discussion, parts B & D, *post*.) Furthermore, regardless of whether the remaining claims of error are governed by the de novo standard, we reject them because appellants fail to overcome the presumption of correctness afforded to the trial court's rulings. (See *Los Angeles Unified School Dist. v. Torres Construction Corp.* (2020) 57 Cal.App.5th 480, 492 [noting that the presumption of correctness applies to " ' "an appeal from any judgment[,]" ' " and that " ' "[d]e novo review does not obligate us to cull the record for the benefit of the appellant" ' "]; *Orange County Water Dist. v. Sabic Innovative Plastics US, LLC* (2017) 14 Cal.App.5th 343, 368, 399 [indicating that an appellant must affirmatively show the trial court erred even if the de novo standard of review applies]; *Estate of Sapp*, *supra*, 36 Cal.App.5th at p. 104 [stating that the presumption of correctness applies to judgments and orders]; Discussion, parts C & E, *post*.)

DISCUSSION

A. We May Review the Trial Court's September 2, 2021, September 16, 2021, and September 24, 2021 Orders

As a preliminary matter, we identify the scope of the instant appeal. On September 24, 2021, appellants filed their notice of appeal, which states that they seek review of "the trial court's orders entered on July 21, September 2 and September 16, 2021, and any other orders that are separately appealable." Similarly, the "statement of appealability" section of appellants' opening brief claims that the notice of appeal "was timely filed from directly appealable orders of the trial court on July 21, September 2, and September 16, 2021." (Boldface & capitalization omitted.) In respondents' appellate brief, aside from stating that they "do not contest that the Court's Judgment is appealable," respondents do not otherwise address which rulings are properly before us.

We dismiss appellants' appeal of the July 21, 2021 order because they explicitly abandoned it in their reply brief. (*Uzyel v. Kadisha* (2010) 188 Cal.App.4th 866, 888, fn. 12 [dismissing an appeal from an order because the appellant "abandon[ed] his appeal" by failing to "challenge" it in his briefing].) Furthermore, as discussed in greater detail below, we conclude: We have jurisdiction over appellants' appeal of the September 2, 2021 order; we may review the September 16, 2021 order in connection with the appeal of the September 2, 2021 order; and appellants' claim that the September 26, 2021 election "was conducted in an unfair and biased way" is actually a challenge to a September 24, 2021 order, which we may review as

part of their timely appeal of the judgment entered on October 13, 2021.[10] (Boldface & capitalization omitted.)

At first blush, it seems that, insofar as appellants intended to appeal the judgment, their appeal was premature because they filed the notice of appeal several weeks before the judgment was entered. Nevertheless, California Rules of Court, rule 8.104(d)(2) authorizes us to "treat a notice of appeal filed after the superior court has announced its intended ruling, but before it has rendered judgment, as filed immediately after entry of judgment." (See Cal. Rules of Court, rule 8.104(d)(2).) On September 16, 2021, the trial court announced its intention to enter a final judgment denying appellants any relief other than the forthcoming election that was to be governed by the procedures prescribed by the September 2, 2021 ruling. Because we deem the notice of appeal to have been filed immediately after entry of the judgment on October 13, 2021, the appeal of that judgment was not premature. It also follows that the appeals of the September 2, 2021 order and the October 13, 2021 judgment are both timely. (See Cal. Rules of Court, rule 8.104(a)(1) [providing that a notice of appeal must be filed on or before the

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[10] Although respondents do not contest our jurisdiction to review these rulings, we are dutybound to evaluate independently whether appellants have timely sought review of appealable orders and/or judgments. (See *Ellis v. Ellis* (2015) 235 Cal.App.4th 837, 842 [" 'Compliance with the time for filing a notice of appeal is mandatory and jurisdictional. [Citations.] If a notice of appeal is not timely, the appellate court must dismiss the appeal.' [Citations.]"]; *Nguyen v. Calhoun* (2003) 105 Cal.App.4th 428, 436 [" '[S]ince the question of appealability goes to our jurisdiction, we are dutybound to consider it on our own motion.' [Citation.]"].)

earliest of: 60 days after the appellant serves or is served with a notice of entry of the judgment or a file-endorsed copy of the judgment, or 180 days after entry of the judgment]; *id.*, rule 8.104(e) [providing that for the purposes of rule 8.104(a) & (d), the term " 'judgment' includes an appealable order"].)

Next, we turn to whether the rulings appellants contest are appealable. The September 2, 2021 order required the parties to conduct a new election in accordance with respondents' proposed procedures on or before October 1, 2021. This ruling constitutes an appealable "order granting . . . an injunction . . . ." (See Code Civ. Proc., § 904.1, subd. (a)(6); see also *PV Little Italy, LLC v. MetroWork Condominium Assn.* (2012) 210 Cal.App.4th 132, 142–143 [holding that an order requiring, among other things, that a new corporate election be held was appealable under Code Civ. Proc., § 904.1, subd. (a)(6)].)

On the other hand, as we explain in Discussion, part B, *post*, appellants challenge only the portion of the September 16, 2021 order that denied their motion for reconsideration of the September 2, 2021 order. Although this order is not appealable, we may review it because we have jurisdiction over the September 2, 2021 order. (See Code Civ. Proc., § 1008, subd. (g) ["An order denying a motion for reconsideration made pursuant to subdivision (a) is not separately appealable. However, if the order that was the subject of a motion for reconsideration is appealable, the denial of the motion for reconsideration is reviewable as part of an appeal from that order."].)

Lastly, as we explain further in Discussion, part D, *post*, appellants' claim that the September 26, 2021 election was unfair and biased against appellants is predicated on evidence

submitted in support of their ex parte application to void the results of the election, which the trial court denied on September 24, 2021. In their briefing, appellants do not discuss whether the order denying their ex parte application is an appealable order.

Even if the September 24, 2021 order were not separately appealable, we would review it in the course of adjudicating appellants' appeal of the October 13, 2021 judgment. Code of Civil Procedure section 906 provides that "[u]pon an appeal pursuant to Section 904.1[,] . . . the reviewing court may review . . . any intermediate ruling . . . which involves the merits," and Code of Civil Procedure section 904.1, subdivision (a)(1) in turn states that an appeal may be taken from a judgment.

Although the notice of appeal does not expressly seek review of the trial court's judgment, it does appeal "the trial court's orders entered on July 21, September 2 and September 16, 2021, *and any other orders that are separately appealable*." (Italics added.) The judgment arguably constitutes a "separately appealable" order, and respondents tacitly adopt this interpretation of the notice of appeal by declining to "contest that the Court's Judgment is appealable." Thus, the judgment falls within the scope of the notice of appeal. (See *In re J.F.* (2019) 39 Cal.App.5th 70, 75 ["A notice of appeal shall be ' "liberally construed so as to protect the right of appeal if it is *reasonably clear* what [the] appellant was trying to appeal from, and where the respondent could not possibly have been misled or prejudiced." ' [Citations.]"].)

To reiterate, we dismiss as abandoned the appeal of the trial court's July 21, 2021 order, and we have jurisdiction to

review appellants' challenges to the September 2, 2021 order specifying the procedures for the new election; the September 16, 2021 order denying reconsideration of the September 2, 2021 order; and the September 24, 2021 order denying appellants' ex parte application to void the results of the new election.

B. Appellants Cannot Rely on the "Corrected" Version of Article 54

As discussed below, we conclude appellants' assertion that Inactive Elders may run for reelection as Active Elders without approval of the Session is, in effect, a challenge to the trial court's September 16, 2021 order denying their motion for reconsideration of the September 2, 2021 order adopting respondents' election procedures. Specifically, appellants' claim that Inactive Elders can stand for reelection without involvement of the Session is predicated on a new English translation of Article 54 of the bylaws that appellants submitted in support of their motion for reconsideration of the September 2, 2021 order. For the reasons detailed below, we conclude the trial court did not err in denying that reconsideration motion, it would be improper to reverse the September 2, 2021 order based on this later submitted new translation, and we cannot consider this evidence in adjudicating appellants' challenge to the October 13, 2021 judgment.

With regard to OMC's bylaws, appellants state the following in a footnote in their opening brief: "Except for Article 54, a complete copy of the OMC's bylaws can be found at [appellants' appendix,] Exhibit 4, Volume 2, pages 69–85. A *corrected translation* of Article 54 can be found at Exhibit 76,

Volume 13, pages 1128, 1140."[11] (Italics added.) The documents found in appellants' appendix, exhibit 76, volume 13, pages 1128 and 1140 are: (a) an excerpt of a declaration from appellants' trial counsel that authenticates exhibit 3 thereto as "a true and correct copy of the *Korean* translation [*sic*] of Article 54 performed by . . . a Court Certified Korean Interpreter and Translator" (some italics omitted); and (b) exhibit 3 to this declaration, which purports to be *an English* translation of Article 54. Appellants filed this declaration on September 13, 2021 to support their concurrently filed supplemental brief. Appellants maintain that the "corrected" translation of Article 54(4) supports their claim that an Inactive Elder may "run for re-election *without* any involvement or approval of the Session." This "corrected" provision states: "Vote to re-serve after having taken a sabbatical, it shall be resolved by more than 2/3 of the voters of a congregational meeting."

On the other hand, the copy of OMC's bylaws in appellants' appendix, volume 2, exhibit 4, pages 69–85 (i.e., the first version of the bylaws referenced in the aforesaid footnote from appellants' opening brief) was attached to a declaration that Chung filed on March 22, 2021 in support of appellants' motion to invalidate the January 17, 2021 election. That copy of Article 54(4) provides: "Following a period of inactive status, the vote for reinstatement to active duty shall require a resolution approved by a 2/3 or greater majority."

In their opening and reply briefs, appellants do not claim that this version of Article 54 submitted in connection with their

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[11] In their appellate briefing, appellants do not elaborate further on why they characterize the second version of Article 54 as a "corrected translation" of that provision.

motion to invalidate the January 17, 2021 election supports their position that an Inactive Elder may stand for reelection to the Active Elder position absent the Session's approval. These briefs rely solely on appellants' "corrected" translation of Article 54 and a declaration from appellant Sung K. Lee that is addressed in footnote 16, *post*. Appellants claimed for the first time at oral argument that the prior, uncorrected, version of Article 54 also establishes that Inactive Elders may stand for reelection without approval of the Session. We need not address this belated contention. (*BFGC Architects Planners, Inc. v. Forcum/Mackey Construction, Inc.* (2004) 119 Cal.App.4th 848, 854 ["We will not consider an issue not mentioned in the briefs and raised for the first time at oral argument."].)

Furthermore, we observe that appellants' new-found interpretation of the prior version of the provision would be problematic. Recall that the iteration of Article 54(4) offered in support of the motion to invalidate the first election provides that "the vote for reinstatement to active duty shall require a resolution approved by a 2/3 or greater majority." In turn, Article 51(2) suggests that the Session selects a candidate via a *resolution*, and that the congregation may thereafter approve that candidate: "The selection of an elder shall be by a *resolution* of the Session, and the selected candidate shall be approved by a vote of 2/3 or more of the Congregational Meeting." (Italics added.) Article 51(3) provides that "the selected candidate shall have received a vote of 2/3 or more" of the Session. Appellants did not address this textual ambiguity during oral argument or in their supplemental appellate brief, other than to assert that the two versions of Article 54 are the same. Thus, even if appellants'

reliance on this version of Article 54 were not untimely, we would reject it as inadequately supported.

We also observe that appellants' contention that the original version of Article 54 allows an Inactive Elder to run for re-election with no Session involvement is inconsistent with Chung's initial understanding of Article 54. In his March 22, 2021 declaration offered in support of the motion to invalidate the first election, Chung stated that "[a]t the end of [a] one year sabbatical, an Inactive Elder who has not reached the age of 65 *can be nominated and appointed by the Session*," and "*[i]f the Inactive Elder accepts appointment*, then he must receive 2/3 majority vote at an election held at a properly noticed congregational meeting." (Italics added.)

Next, although appellants do not argue explicitly that the trial court erred in interpreting their September 13, 2021 supplemental brief as a reconsideration motion (see Factual & Procedural Background, part 5, *ante* [noting the court construed this filing as a reconsideration motion]; see also *Sole Energy Co. v. Petrominerals Corp.* (2005) 128 Cal.App.4th 187, 193 [" 'The nature of a motion is determined by the nature of the relief sought, not by the label attached to it. . . .' [Citation.]"]), they do suggest in their postargument supplemental brief that the September 16, 2021 order should not be treated as an order denying a motion for reconsideration. Specifically, appellants contend they "presented the corrected translation of Article 54 to the trial court in support of their supplemental brief which the court required them to file *before* it issued its final ruling regarding election procedures on September 16, 2021." (Boldface & some capitalization omitted.) They argue that even though the court's September 8, 2021 order "did not specify the content of the

supplemental briefs" it had required the parties to file, the trial court made certain comments at the September 16, 2021 hearing indicating it requested the supplemental briefs so "the parties [could] address any issue related to its ruling on September 2 regarding election procedures and whether it needed to be changed in any way." Appellants also suggest that because the September 16, 2021 order stated that appellants "mainly" brought a motion for reconsideration, the trial court actually did not deem their supplemental brief to be a motion seeking reconsideration of the September 2, 2021 order. These arguments are not well-founded.

As we explained in our Factual and Procedural Background, part 4, *ante*, the September 8, 2021 order not only denied the ex parte application appellants filed the previous day that had sought reconsideration of the September 2, 2021 order, but it also recited: "Over [appellants'] objection, the Court's previous orders stand."[12] Yet, appellants would apparently have us conclude that the September 8, 2021 order somehow transformed the September 2, 2021 order into a tentative ruling that would be revisited during a September 16, 2021 hearing on "an Order to Show Cause Re Entry of Judgment . . . ." This interpretation of the September 8, 2021 order strains credulity, and we reject it as unsupported by the record. Instead, the record reveals that the trial court sought supplemental briefing regarding the content of the final judgment terminating the action. This construction is supported by the fact the September 16, 2021 order described a forthcoming judgment that

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[12] The September 8, 2021 hearing on appellants' September 7, 2021 ex parte application was not transcribed.

would, among other things, provide that the new election held pursuant to the "September 2, 2021, order" "moots any and all remaining issues" in the action.

Furthermore, the reporter's transcript excerpts appellants cite from the September 16, 2021 hearing are of no assistance to them. The trial court's statements that it "expect[ed] this to be the final word on this election," and believed that the parties were "going in circles" are entirely consistent with our conclusion that the court was construing appellants' supplemental brief—including the proposal therein concerning Inactive Elders—as a motion for reconsideration of the September 2, 2021 ruling. In fact, the trial court expressly stated at the hearing that "a motion for reconsideration" was before it. That remark belies appellants' assertion that the trial court considered its September 2, 2021 order a mere tentative ruling on the procedures for the new election.

Although appellants accurately point out that the September 16, 2021 order stated appellants "*mainly* br[ought] a Motion for Reconsideration" (italics added), that fact does not detract from our conclusion that the "corrected translation" of Article 54 was offered in support of a motion for reconsideration. We explained in Factual and Procedural Background, parts 4–5, *ante*, that the trial court found that appellants' September 13, 2021 supplemental brief sought the same relief that they had requested in their September 7, 2021 ex parte application. That ex parte application requested several changes to the September 2, 2021 order's election procedures (including allowing Inactive Elders to run for reelection) and the immediate

entry of judgment or a stay of the September 2, 2021 ruling.[13] Thus, it is apparent that the trial court construed the portions of the supplemental brief seeking changes to the September 2, 2021 order as a motion for reconsideration (i.e., the "main" relief sought), and that the court deemed the remainder of the supplemental brief to be requesting the immediate entry of judgment or a stay of the September 2, 2021 order.

We now turn to the merits of appellants' challenge to the September 16, 2021 order. "[Code of Civil Procedure s]ection 1008, subdivision (a) requires that a motion for reconsideration be based on new or different facts, circumstances, or law. A party seeking reconsideration also must provide a satisfactory explanation for the failure to produce the evidence at an earlier time. [Citation.] A trial court's ruling on a motion for reconsideration is reviewed under the abuse of discretion standard." (*New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 212.)

Appellants fail to demonstrate the trial court abused its discretion in denying their motion for reconsideration of the September 2, 2021 order adopting respondents' election procedures. Appellants do not explain why they did not provide this "corrected translation" of Article 54 to the trial court before it rendered the September 2, 2021 order. Nor did they offer any such explanation in the supplemental brief that the trial court had deemed a reconsideration motion or in the concurrently-filed

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[13] Appellants do not contest the portions of the September 16, 2021 order that denied their request for the immediate entry of judgment or for a stay.

declarations offered in support of that brief.[14] Therefore, the trial court did not err in declining to set aside its prior ruling adopting respondents' proposed election procedures.[15]

Having failed to show the trial court should have reconsidered its September 2, 2021 order based on the "corrected" version of Article 54, appellants may not use that evidence to challenge the September 2, 2021 order directly. This is because appellants did not present this document to the trial court until *after* it issued the September 2, 2021 order, and appellants do not claim this is a "rare case" in which reversal may be based on evidence submitted after the ruling at issue. (See *People v.*

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[14] In that supplemental brief, appellants asserted that they "filed an ex parte application on September 2, 2021" that the trial court had not yet ruled upon, and they "request[ed] that the Court grant [their] ex parte application and enter a judgment accordingly." The case summary does not indicate that appellants filed an ex parte application on September 2, 2021. Further, the ex parte application appellants filed on September 7, 2021 likewise did not explain why appellants had not supplied the court with the "corrected" version of Article 54 before the issuance of the September 2, 2021 order.

[15] Although the trial court did not explicitly rule that appellants' reconsideration motion was defective because they failed to explain why they did not previously supply the court with the "corrected" version of Article 54, we may affirm on that basis. (See *Estate of Sapp*, *supra*, 36 Cal.App.5th at p. 104 [" 'It is well settled that all presumptions and intendments are in favor of supporting the judgment or order appealed from . . . .' [Citations.] 'If the *decision* of a lower court is correct on any theory of law applicable to the case, the judgment or order will be affirmed regardless of the correctness of the grounds upon which the lower court reached its conclusion.' [Citation.]"].)

Bankers Ins. Co. (2021) 65 Cal.App.5th 350, 356 (*Bankers Ins. Co.*); *ibid.* [" 'It is an elementary rule of appellate procedure that, when reviewing the correctness of a trial court's judgment [or appealable order], an appellate court will consider only matters which were part of the record at the time the judgment [or order] was entered. [Citation.] This rule preserves an orderly system of appellate procedure by preventing litigants from circumventing the normal sequence of litigation.' [Citation.]"].)

Appellants cannot use the new translation of Article 54 to attack the judgment either, even though appellants presented this evidence to the court prior to the entry of judgment. Appellants offer their "corrected" version of Article 54 to support their claim that "the trial court's order setting the procedure for the election [(i.e., the September 2, 2021 order)] violated the express terms of Corporations Code section 9418," because in their view, their proposed procedures would have complied with OMC's bylaws (as newly translated). (Boldface & some capitalization omitted.)

Although intermediate rulings are generally reviewable upon appeal of the final judgment (see Code Civ. Proc., § 906 ["Upon an appeal pursuant to Section 904.1[,] . . . the reviewing court may review . . . any intermediate ruling, proceeding, order or decision which involves the merits or necessarily affects the judgment or order appealed from . . . ."]), the September 2, 2021 order is not such an intermediate ruling because it is separately appealable. (See Code Civ. Proc., § 906 ["*The provisions of this section do not authorize the reviewing court to review any decision or order from which an appeal might have been taken*," italics added]; *Machado v. Superior Court* (2007) 148 Cal.App.4th 875, 884 ["[W]here an order is appealable, it is not also reviewable on

appeal from the final judgment . . . ."]; Discussion, part A, *ante*.) Thus, appellants' appeal of the judgment does not afford us yet another opportunity to reverse the September 2, 2021 order based on this newly submitted evidence.

In short, we conclude that appellants may not rely upon the "corrected" version of Article 54 to secure reversal of the September 2, 2021 order or the judgment entered thereafter.[16]

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[16] Appellants also support their assertion that Inactive Elders may be reelected without involvement of the Session with a citation to a declaration from appellant Sung K. Lee that was filed on September 13, 2021. In that declaration, appellant Lee claims that because he had "been an inactive elder for more than 1 year," he is "automatically eligible for re-election pursuant to Article 54 of the OMC Bylaws." Because Lee does not state whether (and, if so, why) he believes he could be reelected in the absence of a resolution from the Session selecting him as a candidate for Active Elder, we presume his declaration does not support that proposition. (See *Estate of Sapp*, *supra*, 36 Cal.App.5th at p. 104 [holding that all presumptions and intendments are in favor of the judgment or order appealed from].) Moreover, because appellants submitted this declaration with the supplemental brief that the trial court construed as a motion for reconsideration of the September 2, 2021 order, their reliance on Lee's declaration fails for the same reasons we have concluded the "corrected" version of Article 54 does not warrant reversal of the September 2, 2021 order or the October 13, 2021 judgment.

C. Appellants Fail to Demonstrate the Trial Court's Adoption of Respondents' Proposed Election Procedures Violates the Establishment Clause or Section 9418

Appellants argue "this court should reverse because the trial court's order setting the procedure for the election violated the Establishment Clause" of the First Amendment to the United States Constitution[17] and section 9418. (Some capitalization omitted.) As discussed below, we reject these appellate claims.

1. *Appellants' Establishment Clause challenge*

Appellants maintain that the Establishment Clause requires "courts [to] defer to the church's determination of the qualifications of its leaders as a purely ecclesiastical matter," and that this constitutional provision "prohibit[s courts] from participating in these determinations." Appellants argue that, "[d]ue to the ecclesiastical nature of the[ ] qualifications" for an Elder that are provided in Article 48, "*only* the Session (*not* the court) can determine whether a member is qualified to serve as an Elder." They contend "[t]he trial court's adoption of [respondents'] procedures unlawfully entangled the court in the church's ecclesiastical matters by giving [the] Senior Pastor authority which is reserved under the bylaws for the Session, to wit: the determination whether a member is qualified to hold the

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[17] The First Amendment provides in relevant part: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." (U.S. Const., 1st Amend.)

esteemed leadership position of Elder." According to appellants, the September 2, 2021 order authorized "the Senior Pastor . . . to *unilaterally* determine that his candidate, [respondent] Kwang Chan Kim, was qualified for position of Active Elder and could be included on the election ballot." On the other hand, appellants claim that "the candidate selected by Elder Chung, Jin Hee Lee, was an Inactive Elder and, thus, qualified by the Session for this position."

"[T]o the extent the determination of who [can serve as] the lawful directors [of a religious corporation] involves the resolution of a matter of ecclesiastical doctrine, policy or administration," the First Amendment requires the "civil court [to] defer to the resolution of the issue by the 'authoritative ecclesiastical body.' [Citation.]" (See *New v. Kroeger* (2008) 167 Cal.App.4th 800, 815–817, 824, italics omitted.) Even assuming the eligibility determination for the Active Elder position calls for the resolution of an ecclesiastical matter, the trial court could not defer to a decision from the relevant authoritative ecclesiastical body—i.e., the Session. Specifically, the parties concede that because the Senior Pastor and Chung were unable to agree on nominees for this position (i.e., no candidate could "receive[ ] a vote of 2/3 or more" of the Session, as required by Art. 51(3)), the Session is "deadlocked" on this issue. (See *Artal*, *supra*, 111 Cal.App.4th at p. 275, fn. 2 [noting that a statement in a brief may be deemed an admission against that party].) Appellants do not cite authority for the proposition that the Establishment Clause barred the trial court from resolving this impasse by allowing each member of the deadlocked

authoritative ecclesiastical body to select his own candidate for the election.[18] (See *Hernandez*, *supra*, 37 Cal.App.5th at p. 277.)

Further, we observe that in the factual background section of their opening brief, appellants assert the "Senior Pastor *unilaterally* identified the 16 purportedly qualified candidates for Active Elder mentioned in [respondents'] proposal and disclosed their names *for the first time* in the ballot that he sent out to Church members for the September 26, 2021, election." Appellants cite part of a declaration from Chung, along with the ballot attached thereto, to support these assertions. Chung, however, did not claim in this declaration that the Senior Pastor disclosed the names of these 16 candidates for the first time in the ballot.

More important, the ballot attached to Chung's declaration shows that the three Inactive Elders Chung desired to have placed on the ballot were among the purportedly qualified persons listed in that document. The fact that Chung's desired candidates (i.e., the three Inactive Elders) were among the candidates identified on the ballot belies his assertion that the Senior Pastor had sole authority to determine the eligibility of candidates. This evidence instead suggests that each member of the Session was permitted to make that eligibility determination in the course of nominating his candidate. (See *Estate of Sapp*,

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[18] Appellants tacitly admit that simply allowing the deadlock on the Session to persist without court intervention is not an acceptable outcome. Specifically, they fear that the "Senior Pastor[,] who does not have a term limit[,] will continue in his position and will have de facto absolute control over the Church as the sole member of the Session" once Chung's tenure as Active Elder expires on July 31, 2022.

supra, 36 Cal.App.5th at p. 104 [holding that a reviewing court must draw all presumptions and intendments in favor of the trial court's ruling, and that an appellant has the burden of overcoming the presumption of correctness].)

Insofar as appellants contend the Establishment Clause required the trial court to adopt their proposal for breaking the stalemate, we reject that contention. Appellants' assertion that Inactive Elders may stand for "re-election *without* any involvement or approval of the Session" is predicated on their "corrected translation" of Article 54 and appellant Sung K. Lee's conclusory assertion that this provision automatically entitles him to run for reelection. For the reasons provided in Discussion, part B, *ante*, appellants may not rely on this evidence to contest the trial court's September 2, 2021 order or the judgment, and we reject their challenge to the September 16, 2021 order that is predicated on this evidence. (See *Yolo County Dept. of Child Support Services v. Myers* (2016) 248 Cal.App.4th 42, 44, 47–50 [rejecting an appellant's claim that "the trial court improperly refused to admit additional proof" offered in support of his constitutional claim because the evidence was "submitted with [appellant's] request for reconsideration" and he "provided no explanation for his failure to produce this evidence earlier"].)

Lastly, appellants intimate that the Session may be deemed to have already determined that the Inactive Elders are eligible to run for reelection. In particular, appellants argue that "Inactive Elders are individuals who have previously served as Active Elders on the Session and, as such, have already been vetted and approved by the Session as ecclesiastically qualified for the position of elder." It is not altogether clear whether this argument is different from appellants' assertion that the

"corrected" translation of Article 54 allows Inactive Elders to be placed on the ballot in the absence of a resolution from the Session. Absent appellants' linking this contention to cogent argument, we do not address this contention further. (See *Hernandez*, *supra*, 37 Cal.App.5th at p. 277 ["We may and do 'disregard conclusory arguments that are not supported by pertinent legal authority or fail to disclose the reasoning by which the appellant reached the conclusions he wants us to adopt.' [Citation.]"].)

2. *Appellants' claim that the trial court's adoption of respondents' proposed election procedures violated section 9418*

Section 9418, subdivision (c) provides: "The court, consistent with the provisions of this part and in conformity with the articles and bylaws *to the extent feasible*, may determine the person entitled to the office of director or may order a new election to be held or appointment to be made, may determine the validity of the issuance of memberships and the right of persons to vote and may direct such other relief as may be just and proper." (§ 9418, subd. (c), italics added.)

Appellants contend the trial court's September 2, 2021 order "violated the express terms of section 9418" because the election procedures departed from OMC's bylaws and appellants' "proposal to have Inactive Elders run for re-election to the Session" was feasible. Appellants point out that under the court's procedures, the individual who secures the " 'greatest number of votes' " from the congregation would win the election, whereas Article 51(2) provides that any candidate who received the vote of

at least two-thirds of the congregation will be elected to the Active Elder position.[19]

Appellants maintain that their proposal complied with the bylaws because Article 54 authorized the court to put the "three Inactive Elders who were interested in running for re-election . . . . on the election ballot *without* [the] Senior Pastor and Elder Chung needing to take any action or agree on anything." Appellants also argue that "since Inactive Elders had previously served on the Session, the Session had already determined that they were qualified for the position of Elder and there was no risk of the court getting entangled in ecclesiastical matters by authorizing their bid for re-election." They further contend that "[i]f any one or more of these Inactive Elders was able to secure the vote of 2/3 or more of the Congregants," the "Inactive Elders who rejoined the Session would be able to start working the day after the election" because they do not have to "undergo a six-month training before they could assume their duties."

Once again, appellants' claim that a vote of the Session would not be required to place Inactive Elders on the ballot is based upon their "corrected translation" of Article 54, which is evidence appellants cannot use to challenge the rulings on appeal. (See Discussion, part B, *ante*.)

Furthermore, we acknowledge that the bylaws appellants provided to the trial court prior to the issuance of the September 2, 2021 order define an Inactive Elder as someone

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[19] Appellants also seem to argue the court's procedures violate Article 51 because they afford the Senior Pastor unilateral authority to select the candidates. That claim fails for the reasons provided in Discussion, part C.1, *ante*.

who was selected by a resolution of the Session before he or she served a prior term as Active Elder.[20] Yet, aside from their invocation of the "corrected" translation of Article 54, appellants fail to demonstrate that the bylaws would allow an Inactive Elder to appear on the ballot without first securing a resolution selecting that person as a candidate for the new election. In fact, the version of Article 54(4) appellants provided to the court in support of their motion to invalidate the January 17, 2021 election suggests otherwise. (See Discussion, part B, *ante*.)

Lastly, appellants have not shown that "an Inactive Elder can start performing his duties immediately without having to undergo a six-month training because of his prior service on the Session." Article 52 provides: "The candidate selected through the voting process shall undergo a general educational training program as determined by the Session for a period of six months, sit for an exam, and be installed in accordance with the process and procedures set up by the Joint Mission Group." This provision does not address explicitly whether an Inactive Elder's completion of the six-month program prior to his or her now-expired-three-year term automatically satisfies this education requirement.

Appellants do not explain why Article 52, or any other provision of the bylaws, should be interpreted to allow reelected Inactive Elders immediately to serve on the Session without first

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[20] The version of Article 51(2) that appellants submitted to the court with their motion to invalidate the January 17, 2021 election provides that "[t]he selection of an elder shall be by a resolution of the Session . . . ." Article 54(3) of that version of the bylaws in turn provided that "[a]fter the end of the three year term," an Active Elder "shall be on inactive status . . . ."

completing the six-month program identified in Article 52. Instead, they support their assertion that "Inactive Elders who rejoined the Session [are] able to start working the day after the election" with a citation to a brief filed by appellants' trial counsel during the proceedings below. The cited excerpt does not address this issue. Appellants have thus failed to establish that an Inactive Elder may join the Session immediately after the election. (See *Hernandez*, *supra*, 37 Cal.App.5th at p. 277.)

In sum, we reject appellants' argument that the trial court violated section 9418, subdivision (c) by adopting election procedures that deviate from OMC's bylaws because: (a) the trial court did not err in denying appellants' motion for reconsideration premised on their "corrected" version of Article 54; and (b) appellants fail to establish that after excluding the new translation of Article 54 from our analysis, it was feasible for the court to adopt election procedures adhering to OMC's bylaws.

D. Appellants Fail to Demonstrate the Trial Court Erred in Rejecting Their Argument that the September 26, 2021 Election Was Conducted in an Unfair and Biased Way

Appellants complain that "the trial court put the entire administration of the September 2021 election in the hands of the Senior Pastor." According to appellants, the trial court's supposed delegation of the election administration to the Senior Pastor resulted in a "process [that] was unfair and biased against [appellants] in significant ways, including the content of the election ballot, verification of the identities of persons who voted, and the counting of the votes." (Fn. omitted.)

Before proceeding to the merits of this claim of error, it is important to mention that appellants are actually contesting a September 24, 2021 order, and not the September 2, 2021 order adopting respondents' proposed election procedures. Appellants concede in their briefing that the September 2, 2021 order, by its terms, provided that "[a]n election committee comprised of 7 mutually agreeable Elders Emeritus shall oversee the election and calculate the results." Appellants do not argue that any provision of the September 2, 2021 order *expressly* conferred upon the Senior Pastor the sole authority to administer the September 26, 2021 election. Rather, they contend that, "[b]y adopting [respondents'] proposed procedures, the trial court *effectively* put the entire election process under the exclusive and unilateral control of [the] Senior Pastor . . . ." (Italics added.) To support this assertion, appellants cite a declaration from Chung filed on September 23, 2021 in support of an ex parte application for an order voiding the upcoming new election and for an automatic stay, which the trial court denied on September 24, 2021. We thus conclude this claim of error targets that September 24, 2021 ruling, and not the September 2, 2021 order that had been issued before appellants filed the September 23, 2021 ex parte application and Chung's supporting declaration. (See also *Bankers Ins. Co.*, *supra*, 65 Cal.App.5th at p. 356 [" '[W]hen reviewing the correctness of a trial court's judgment [or appealable order], an appellate court will consider only matters which were part of the record at the time the judgment [or order] was entered. [Citation.] . . . ' [Citation.]"].)

Furthermore, although appellants invoke section 9418 in connection with their claim that the election procedures were biased and unfair, they do not contend that this challenge arises

from a failure to adhere to OMC's articles of incorporation or bylaws. Rather, appellants appear to contend that by refusing to void the results of the September 26, 2021 election, and thereby tacitly approving an election that was administered in an unfair and biased way, the trial court exceeded the scope of its statutory authority to "direct such . . . relief as may be just and proper."[21] (See § 9418, subd. (c).)

Apart from generally contending the entirety of this appeal is subject to de novo review because it "presents issues of law, statutory and constitutional, on undisputed facts," appellants do not address the standard of review applicable to this claim.[22] Our research has not revealed any authority that is squarely on point.

We conclude abuse of discretion is the standard for our review of this issue. In applying other provisions of the Corporations Code that include language authorizing "just and proper" relief, Courts of Appeal have observed that these statutes confer "broad" or "wide discretion" upon trial courts. (See *Haah v. Kim* (2009) 175 Cal.App.4th 45, 47, 53 [stating that in "an action to invalidate the appointment or election of directors" under § 709, courts "are given wide discretion to consider all matters relevant to the determination"]; § 709, subd. (c) [allowing courts to "direct such . . . relief as may be just and proper" in

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[21] Although this lack of clarity would be reason alone not to address this claim of error (see *Hernandez*, *supra*, 37 Cal.App.5th at p. 277), we conclude for the reasons stated in this section that the claim would fail even if construed as a challenge under section 9418, subdivision (c).

[22] Also, the evidence discussed in this section undercuts appellants' assertion that the relevant facts are undisputed.

actions brought under that statute]; *Havlicek v. Coast-to-Coast Analytical Services, Inc.* (1995) 39 Cal.App.4th 1844, 1849 & fn. 2, 1856 [holding that § 1603, subd. (a), which provides that a trial court " 'may enforce the right of inspection [of corporate books and records] with just and proper conditions[,]' " confers "broad discretion"].) Discretionary decisions of trial courts are typically reviewed for abuse of discretion. (See, e.g., *In re Caden C.* (2021) 11 Cal.5th 614, 625 640 (*Caden C.*) [holding, in a dependency case, that because the "decision . . . whether termination of parental rights would be detrimental to the child . . . is discretionary," it is "properly reviewed for abuse of discretion"]; *In re ANNRHON, Inc.* (1993) 17 Cal.App.4th 742, 751 [holding that the trial court has the discretion to appoint a provisional director under § 308, and that "[d]iscretionary trial court rulings are reviewed under the 'abuse of discretion' standard"].)

"A court abuses its discretion only when ' " 'the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination.' " ' [Citation.]" (*Caden C.*, *supra*, 11 Cal.5th at p. 641.) In reviewing " 'the *factual basis* for an exercise of discretion,' " "a reviewing court should 'not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts[,]' " and " ' " '[w]hen two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.' " ' [Citations.]" (See *id.* at pp. 640–641.)

The trial court did not abuse its discretion in denying appellants' request to void the results of the September 26, 2021 election. Appellants' claim that respondents "*unilaterally* determined who would supervise the election and count the votes" rests on Chung's testimony that on the morning of

September 10, 2021, Chung sent the Senior Pastor an e-mail requesting a meeting to "select 7 mutually agreeable Elders Emeritus who will oversee the election and calculate the results pursuant to the Court order." Chung attested that "at late night" on September 10, 2021, the Senior Pastor's staff "notified retired Elders that an emergency meeting [was to] be held on September 11, 2021." Chung claims he "was never consulted nor notified regarding th[is] meeting," the Senior Pastor "never provide[d] an opportunity for [Chung] to make [his] recommendations" regarding the appointment of Elders Emeritus to the election committee, and the Senior Pastor claimed falsely that Chung "failed to provide names of three Emeritus Elders" to be appointed to the committee. Appellants contend this declaration establishes that respondents "unilaterally selected the[ ] members" of the election committee.[23]

The record contains evidence contradicting appellants' claim that Chung had no opportunity to recommend appointments to the election committee. In particular, on September 13, 2021, respondents' counsel filed a declaration, indicating that he sent an e-mail on September 9, 2021 to appellants' trial counsel asking that Chung "nominate[ ] his election committee representatives as required by the Court's

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[23] In connection with this claim of error, appellants also allege that, "consistent with the long-standing custom and practice of the church, [the] Senior Pastor and Elder Chung previously had agreed to conduct the election under the supervision of an Election Committee headed by Elder Emeritus Young Song Lee." This assertion has no apparent bearing on whether the election committee selection process was conducted in an unfair or biased manner.

Order." Respondents' counsel attested that as of September 13, 2021, Chung had not nominated election committee representatives, nor had appellants' trial counsel responded to respondents' attorney's September 9, 2021 correspondence.

Under the deferential abuse of discretion standard, the trial court was entitled not only to credit respondents' evidence and reject Chung's version of events, but also to conclude that respondents did not unfairly exclude Chung from the election committee selection process. Rather, the trial court could have reasonably concluded that the Senior Pastor appointed the election committee members after Chung had declined to participate in the selection process in the 11-day period following the issuance of the September 2, 2021 order. Further, in the declaration in which Chung claimed to have been excluded from the election committee selection process, Chung indicated that he intended to veto the Senior Pastor's nominee. Even though the September 2, 2021 order allowed the Senior Pastor and Chung each to nominate one person for the Active Elder position, Chung stated the Senior Pastor could not nominate his candidate, Kwang Chan Kim, because Chung did not agree with that selection. Under these circumstances, it would not be arbitrary, capricious, or patently absurd for the trial court to have found that the Senior Pastor had not prevented Chung from participating in the court-ordered election proceedings, and that Chung instead was refusing to cooperate in implementing those election procedures—procedures ordered to break the deadlock on the Session. (See Discussion, part C.1, *ante* [explaining that the parties concede that the Session was deadlocked].)

Appellants' failure to establish error in the trial court's rejection of their allegations of exclusion from the election committee selection process is dispositive of the remainder of this challenge to the fairness of the election procedures. Although appellants claim "the trial court *effectively* put the entire election process under the exclusive and unilateral control of [the] Senior Pastor," they do not argue respondents accomplished this feat by usurping the election committee's authority to "oversee the election and calculate the results." (Italics added.) Rather, appellants' argument that the Senior Pastor exercised exclusive control over the election process apparently stems from respondents' "unilateral[ ] select[ion]" of the election committee members. Furthermore, under appellants' theory, "the process was unfair and biased against [them] in significant ways, including the content of the election ballot, verification of the identities of persons who voted, and the counting of the votes," because it was the product of the Senior Pastor's alleged de facto control over the election committee.[24] That argument fails for the reasons provided earlier in this section.

Moreover, appellants fail to show that their complaints regarding the logistics of the election establish the trial court abused its discretion in denying their request to void the new

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[24] In particular, appellants' briefing states: "As discussed above, by adopting [respondents'] procedures, the trial court put the entire administration of the September 2021 election in the hands of the Senior Pastor. *Not surprisingly*, the process was unfair and biased against [appellants] in significant ways, including the content of the election ballot, verification of the identities of persons who voted, and the counting of the votes." (Italics added, fn. omitted.)

election results. For instance, although appellants argue the ballot "misled the congregation into thinking that the trial court and/or Elder Chung agreed" that the candidates identified therein were qualified for the Active Elder position, it is not apparent that this alleged misrepresentation would have caused a church member to vote for respondent Kwang Chan Kim.[25] In any event, appellants do not argue that the trial court acted arbitrarily, capriciously, or in an absurd manner in overruling their technical objections to the election.[26] (See *Hernandez*, *supra*, 37 Cal.App.5th at p. 277 [" 'We are not obliged to make other arguments for [appellant] [citation], nor are we obliged to speculate about which issues counsel intend to raise.' [Citations.]"].)

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[25] Additionally, appellants argue the ballot prejudiced them because "it displayed a photograph *only* for [respondents'] candidate and an empty box for [appellants'] candidate." Yet, Chung admitted that Jin Hee Lee told him on September 10, 2021 that the Senior Pastor asked for a current picture of Jin Hee Lee to put on the ballot. Because appellants do not offer any evidence on this point, we presume Jin Hee Lee refused to provide this photograph to the Senior Pastor. (See *Estate of Sapp*, *supra*, 36 Cal.App.5th at p. 104.)

[26] We further note that the argument section of appellants' opening brief does not list each of the "significant ways" in which the election process was allegedly "unfair and biased against" them. We are not required to guess which complaints made in the factual background section of their opening brief are intended to support this claim of error. (See *Browne v. County of Tehama* (2013) 213 Cal.App.4th 704, 725–726 (*Browne*) [holding that an appellant forfeited a contention by failing to "present [it] in the argument section of either the opening or reply brief"].)

In sum, we conclude that the abuse of discretion standard applies to the trial court's rejection of appellants' assertion that the election was conducted in an unfair and biased manner, and that appellants have failed to demonstrate the trial court abused its discretion in rejecting this challenge and denying their preelection request to void the forthcoming results of that new election.

E. Appellants' Remaining Claims Fail

We reject appellants' other contentions.

In the factual background section of their opening brief, appellants make several complaints that are not reasserted in the argument section and that have no apparent legal significance to this appeal. An example of such a complaint is appellants' statement that the trial court "initially took the position" at the September 2, 2021 hearing that "it would not enter its tentative order and would give the parties an opportunity to confer regarding the identity of the Election Chair," but later, "suddenly and inexplicably, the trial court changed its mind and decided to adopt its tentative without any modification as its final ruling—despite [respondents'] acknowledgment that paragraph 5 of [their] proposal was 'not possible.' "[27] Another example is appellants' assertion in their factual background that during the trial court proceedings, they

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[27] We note that respondents' counsel actually stated at the hearing that "having an Elder Emeritus" chair the election committee "*may not* be possible . . . ." (Italics added.) Appellants do not offer evidence that an Elder Emeritus did not ultimately chair the committee, nor do they otherwise explain the context of respondents' counsel's remark.

objected to respondents' proposal to have Elders Emeritus "serving in the critical role of overseeing the election and counting the ballots" on the ground that "many of these individuals were in their late 70's and 80's and physically unable to perform these tasks." Because appellants did not pursue these and other contentions from the factual background in the argument section of the opening brief, we disregard them. (See *Browne*, *supra*, 213 Cal.App.4th at pp. 725–726.)

Additionally, appellants argue that we "should reverse the trial court's ruling which adopted [respondents'] proposed procedures for the election of the Session and ensuing judgment and remand" with certain detailed directions to the trial court. For example, appellants ask us to instruct the lower court to "issue an order requiring that, in the interim period before a new election is held, Sung K[.] Lee will serve as CFO of the church, as he was the last duly appointed person to this position by the Session before the invalidated election in January 2021." Because appellants have not demonstrated any error, we have no occasion to instruct the trial court to provide any such relief.

To summarize, we affirm the trial court's September 2, 2021 order and the judgment entered thereafter because appellants have failed to discharge their obligation to demonstrate reversible error. (*Parkford Owners for a Better Community v. County of Placer* (2020) 54 Cal.App.5th 714, 721 ["[T]he ultimate burden of demonstrating reversible error *is always* on the appellant," italics added].)

DISPOSITION

We dismiss as abandoned appellants' appeal challenging the trial court's July 21, 2021 order. We affirm the trial court's September 2, 2021 order and the judgment entered on October 13, 2021. This court's December 2, 2021 order granting appellants' petition for writ of supersedeas is vacated. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED.

BENDIX, Acting P. J.

We concur:

CHANEY, J.

VOGEL, J.*

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* Retired Justice of the Court of Appeal, Second Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.